

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Delete, Delete, Delete

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GN Docket No. 25-133

COMMENTS OF SECURUS TECHNOLOGIES, LLC

April 11, 2025

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EXECUTIVE SUMMARY

In these comments, Securus Technologies, LLC (“Securus”) identifies a handful of specific rulings from the 2024 Order revising incarcerated people’s communications services (“IPCS”) that warrant immediate attention in light of their negative consequences and unnecessary costs and burdens. Most critical is the need to reassess the 2024 Order’s bar on the use of regulated revenue to fund critical safety and security measures, including recording, storage, and live monitoring, which is creating havoc for many law enforcement agencies.

Another key issue is the 2024 Order’s preclusion of assessing separate ancillary service fees, which is driving up provider costs due to changing consumer behavior. Freed from transaction costs, consumers are switching to single call services or making very small, repeated deposits that result in an increased number of transactions in which providers cannot recover their costs of service for each transaction. The Commission can immediately help alleviate these losses by restoring the ability to separately charge for these safety and security services and revising current rules to allow providers to set a modest minimum deposit level, such as \$10.

Apart from those issues, these comments address several discrete sets of rules that are impractical, unnecessarily costly, and unlikely to further consumer interests. These are not addressed in the pending appeals or petitions for reconsideration and some are awaiting OMB approval. The Commission should address them now rather than waiting as they are demonstrably unnecessary and readily fit the criteria set forth in the Delete Public Notice.

The Delete Public Notice requests that commenters specify the rules recommended for elimination or modification. The list below identifies the rules at issue in these comments and recommended for elimination or revision:

- Eliminate rules barring use of regulated revenue to recover the cost of providing safety and security measures, including recording, live monitoring and storage.
- Eliminate rules barring separate ancillary service charges and that preclude minimum consumer deposits (47 C.F.R. § 64.6100).
- Eliminate requirements to automatically issue refunds, particularly for “debit accounts,” which are accounts under the control of an incarcerated individual or the correctional authority (§ 64.6130(d)), and remove related disclosure and notification requirements (§§ 64.6130(d)(2); (f) and (k));
- Eliminate certain disclosure rules associated with alternative pricing plans and rationalize the disclosure framework (§ 64.6140(c) – (f));
- Modify disclosure of international calling costs to enable disclosure of average costs (§ 64.6110(c)); and
- Modify the Commission’s rate cap waiver process to permit waivers on a facility-by-facility basis and establish a deadline for disposition. (§ 64.6120).

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COMMENTS OF SECURUS TECHNOLOGIES, LLC

Pursuant to the Delete Public Notice,¹ Securus Technologies, LLC (“Securus”) submits these comments regarding certain obligations established in the Federal Communication Commission’s (“Commission”) 2024 Order.² The specific rules discussed in these comments readily meet the criteria set forth in the Delete Public Notice for elimination or modification.

I. Introduction and Summary

Securus has been a strong proponent of lowering IPCS prices for consumers while also ensuring that rate caps enable providers to recover their reasonably incurred costs, or as stated in the section 276 of the Communications Act, that providers are “fairly compensated.” The Martha Wright-Reed Act (“MWR Act”) afforded an opportunity to strike this balance for an expanded set of services at the interstate and intrastate level. Unfortunately, the 2024 Order missed this opportunity and imposed draconian cuts, largely through the artifice of finding critically important safety and security costs not necessary for the provision of those services. The 2024 Order also imposed a host of other regulatory obligations without accounting for the cost of any of them. The 2024 Order was sufficiently flawed that Securus, Pay Tel Communications, Inc., law enforcement and 17 states felt compelled to file petitions for review. Other providers moved to reconsider. While those processes play out, the Commission launched this proceeding as another vehicle to address overly costly, inefficient, burdensome and unnecessary rules.

¹ *In re Delete, Delete, Delete*, GN Docket No. 25-133, Public Notice, DA 25-219 (rel. March 12, 2025) (“Delete Public Notice.”).

² *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act and Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23- 62, 12-375, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, FCC 24-75, (rel. Jul. 22, 2024) (“2024 Order” or “Order”).

In these comments, Securus identifies a handful of specific rulings from the 2024 Order that warrant immediate attention in light of their negative consequences and unnecessary costs and burdens on the provision of IPCS. IPCS has long been regarded as a unique service to provide communications into the corrections environment in a manner and with features to support the management of the incarcerated population and protect public safety. Common safety and security features of IPCS include a platform for managing access to (and use of) the services, monitoring of all communications except attorney communications (through automated means embedded in the platform, live monitoring by correctional staff or post-call review by correctional or provider staff), recording of all communications except attorney communications, storage and retrieval of recordings for evidentiary, investigative, and other purposes, and technologies to support the platform and investigations.

Most critical is the need to reassess the 2024 Order's bar on the use of regulated revenue to fund critical safety and security measures, including recording, storage, and monitoring, which is creating havoc for many law enforcement agencies. Another key issue is the 2024 Order's preclusion of assessing separate ancillary service fees, which is driving up provider costs due to changing consumer behavior. Freed from transaction costs, consumers are switching to single call services or making very small, repeated deposits that result in an increased number of transactions in which providers cannot recover their costs of service for each transaction. The Commission can immediately help alleviate these losses by restoring the ability to separately charge for these safety and security services and revising current rules to allow providers to set a modest minimum deposit level, such as \$10.

Apart from those issues, these comments address several discrete sets of rules that are impractical, unnecessarily costly, and unlikely to further consumer interests. These are not

addressed in the pending appeals or petitions for reconsideration and some are awaiting OMB approval.³ The Commission should address them now rather than waiting as they are demonstrably unnecessary and readily fit the criteria set forth in the Delete Public Notice.

The Delete Public Notice requests that commenters specify the rules recommended for elimination or modification.⁴ The list below identifies the rules at issue in these comments:

- Eliminate rules barring use of regulated revenue to recover the cost of providing safety and security measures, including recording, live monitoring and storage.
- Eliminate rules barring separate ancillary service charges and that preclude minimum consumer deposits (47 C.F.R. § 64.6100).
- Eliminate requirements to automatically issue refunds, particularly for “debit accounts,” which are accounts under the control of an incarcerated individual or the correctional authority (§ 64.6130(d)), and remove related disclosure and notification requirements (§§ 64.6130(d)(2); (f) and (k));
- Eliminate certain disclosure rules associated with alternative pricing plans and rationalize the disclosure framework (§ 64.6140(c) – (f));
- Modify disclosure of international calling costs to enable disclosure of average costs (§ 64.6110(c)); and
- Modify the Commission’s rate cap waiver process to permit waivers on a facility-by-facility basis and establish a deadline for disposition. (§ 64.6120).

II. The Commission Failed to Assess Costs

Before addressing specific rules, it is critical to note that the Commission undertook no assessment of the costs versus benefits of the 2024 Order’s staggering number of new regulatory obligations. This failure alone warrants reassessment. The Delete Public Notice confirms the

³ Securus submitted Paperwork Reduction Act comments to the Commission. Paperwork Reduction Act Comments of Securus Technologies, LLC, WC Docket Nos. 23-62 & 12-375 (Jan. 7, 2025).

⁴ Delete Public Notice at 2 (“Submissions should identify with as much detail and specificity as possible the rule or rules that the commenting party believes should be repealed (or modified) and the rationale for their recommended action.”)

critical importance of cost-benefit analysis in deciding whether to regulate in the first instance, which the Commission did not undertake for the vast majority of the new regulatory obligations imposed in the 2024 Order. Proper assessment of costs is also relevant to retrospective review. If post-adoption analysis and experience indicates the agency's cost-analysis to be woefully lacking, as is the case here, the Delete Public Notice indicates that rules should be eliminated or revised.⁵

The Commission only undertook a cost-benefit analysis related to the impact of the new, lower rate caps. No cost-benefit analysis was attempted for all the other regulatory obligations imposed. And the limited analysis it did undertake was deeply flawed. The Commission quantified the benefits of the new rate structure at \$24 million versus a "cost" of \$14 million, resulting in a purported net benefit of \$10 million in the inaugural year.⁶ Setting aside questions regarding the quantifiable benefit calculation,⁷ the cost calculation is patently unreasonable.

The 2024 Order's cost calculation was based on the cost estimate conducted in the Commission's 2021 Order, which assessed costs of implementing that order's new interim rate caps for interstate services. The 2021 Order limited its cost analysis to the time spent to revise contracts and make necessary billing system changes.⁸ There the Commission assumed it would

⁵ Delete Public Notice at 2-3.

⁶ 2024 Order at ¶¶ 579-86. The Commission also found a \$362 million "welfare gain" due to a "transfer from correctional authorities and providers." *Id.* at ¶ 582. The Commission did not explain what it meant by a such a transfer or how it derived the number. At any rate, this value was not used to derive the net benefit of \$10 million.

⁷ The Commission considered nonquantifiable benefits of lower rates in terms of increasing communications with friends and family such as improving mental well-being and reduced recidivism, but it did not factor in the potential that law enforcement agencies may be forced to eliminate or substantially curtail IPCS altogether, as has already occurred, and wholly discounted law enforcement concerns that eliminating automated safety and security capabilities such monitoring and recording substantially curtail availability of IPCS. Moreover, although the Commission set the rate caps using both billed and unbilled minutes, only billed minutes were used to calculate benefits.

⁸ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9609-10 ¶ 202 (2021) ("2021 Order").

take 25 hours to revise each of the industry’s 3,000 contracts at \$70 per hour, resulting in a cost of approximately \$6 million. For the 2024 Order, the Commission simply increased that number to account for inflation and that intrastate rates were also now included. This “update” resulted in a total industry cost of \$7 million to implement the rate caps for audio services and the Commission arbitrarily assigned the same amount for video costs, resulting in the \$14 million total cost estimate.

The cost calculation is plainly inadequate. For one, it neglects the added complexity of negotiating new contracts with law enforcement and realigning billing systems that must now not simply adjust for new, tiered interstate rate caps, but also exclude site commissions, thoroughly revamp safety and security cost recovery, address the elimination of separate ancillary service charges, and implement first ever video service rate caps and mandating per-minute video pricing.⁹ Moreover, the cost analysis wholly ignored the costs of implementing expanded and highly prescriptive refund obligations and a welter of new notification and disclosure obligations. Finally, the 2024 Order completely ignored the costs that would be imposed on law enforcement that are required to pay for safety and security measures and find replacement funding for site commission revenue that previously supported a number of programs for incarcerated persons.

The cost analysis is sufficiently inadequate to warrant wholesale review of the entire Order. Cognizant that the Order is on appeal and the existence of petitions for reconsideration, Securus here limits its requested rule eliminations and modifications to a handful of specific items, many of which are not addressed in the appeal or reconsideration petitions.

⁹ See, *Incarcerated People’s Communications Service; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WD Docket Nos. 23-62 & 12-375, Order, DA 24-1277 (rel. Dec. 19, 2024) (waiving until September 1, 2025 the requirement that video service be billed on a per-minute basis).

III. The Commission Should Reverse Its Rulings Regarding Safety and Security Costs and Allow Use of Regulated Revenue for These Services

The Commission's ruling barring the use of revenue from IPCS to recover the cost of most safety and security measures is perhaps the 2024 Order's most problematic ruling and requires immediate attention. It is becoming abundantly clear that the ruling is having a detrimental effect on law enforcement and is leading to severe market distortions. Securus and Pay Tel recently highlighted the adverse consequences of the 2024 Order on law enforcement.¹⁰

In connection with the 2023 Mandatory Data Collection, the Commission created certain safety and security-related cost categories for purposes of collecting cost data. As broad general categories for purposes of collecting data, these appeared to be reasonable groupings: CALEA Compliance Measures, Law Enforcement Support Services,¹¹ Communications Security Services, Communications Recording Services,¹² Communications Monitoring Services,¹³ Voice Biometrics Services,¹⁴ and Other Safety and Security Measures.¹⁵ For the twelve providers whose costs were analyzed, the reported costs for safety and security totaled nearly \$570 million, almost one-third of the total industry expenses.¹⁶ The Commission then made certain adjustments to these costs in calculating the lower bound, resulting in an adjusted total industry

¹⁰ Letter from Michael Pryor, Brownstein Hyatt Faber Schreck, counsel for Securus, and Marcus Trathen, Brooks Pierce LLP, counsel for Pay Tel, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62 & 12-375 (filed April 3, 2025) (Securus/Pay Tel Letter).

¹¹ Including the administration of subpoenas, the administration of crime tip lines, the administration of informant lines, maintenance of data repositories, etc. *See* Order, n. 1410.

¹² Including privacy disclaimers, recording of communications, and storage of recorded communications. *See id.*, n. 1430.

¹³ Including live or real-time monitoring of communications (which may be accomplished through technical means or human monitoring), automatic word detection, communication transcription, and analysis of recordings, which may include keyword searches. *See id.*, n. 1442.

¹⁴ Including voice printing, voice identification, continuous voice verification, and voice databasing. *See id.*, n. 1455.

¹⁵ These are safety and security measure not included in the prior six categories, and may include reporting obligations, acquisition of patents to support safety and security technologies, and research and development of new safety and security technologies. *See id.*, n. 1466.

¹⁶ Order, App. F., Table 3.

safety and security costs of approximately \$524 million. The Commission ultimately only included the costs of CALEA (\$5,390) and Communications Security Services (\$179.7 million) in setting the lower bound.¹⁷

In the Order, the Commission took these cost categories, designed to elicit cost information, and applied them to a different purpose in its “used and useful” analytical framework, without any consideration or adjustment for whether these general categories were suitable for this purpose. The Commission developed an array of justifications to exclude from cost recovery all measures except CALEA Compliance Measures and Communications Security Services. The other measures were deemed not used and useful on varying grounds: many were deemed only beneficial to law enforcement; some were found to be beneficial to consumers but were included in a category found overall to be not used and useful;¹⁸ some were beneficial to consumers but not necessary for actually completing the communication;¹⁹ some that helped ensure used and useful measures were enforceable were nonetheless deemed excessive;²⁰ and others were rejected because they were new and developed to address needs identified by correctional facilities in with connection allowing IPCS.²¹

The 2024 Order’s safety and security rulings had a single purpose – to provide a mechanism for dramatically lowering rate caps in the face of reasonably reported costs warranting continuation of rates caps at or near the Commission’s 2021 interim rates. Utilizing cost information provided by IPCS providers, the Commission adopted interim rate caps in 2021

¹⁷ Order, App. I Table 6, ¶¶, 55-57.

¹⁸ Order, ¶ 385. This is noted as part of the arbitrary and capricious analysis in the appeal briefs.

¹⁹ See, e.g., Order, ¶ 394 (Prison Rape Elimination Act hotlines are beneficial to incarcerated but “do not facilitate the provision of IPCS and are there for not used and useful in the provision of IPCS”).

²⁰ See, e.g., *id.*, ¶ 400 (use of call recordings to ensure compliance with Communications Security Services deemed not used and useful).

²¹ See, e.g., *id.*, ¶ 406 (“The fact that IPCS has historically been offered without capabilities like voice biometrics undercuts the notion that these capabilities are required for the provision of IPCS.”)

that it concluded were just and reasonable. Based on similar cost information submitted by IPCS providers, and again determining whether rates were just and reasonable, the 2024 Order nevertheless slashed those interim rates by more than half and up to two-thirds, depending on tier. How was the Commission able to justify such a large reduction in rates based on similar cost information and applying the same just and reasonable standard? It did so by determining that a significant percentage of the costs incurred by providers simply do not count.²² These costs were for safety and security services required by correctional facilities as a condition for allowing IPCS and that minimize the ability of incarcerated persons to use those communications services to commit crimes or otherwise abuse their calling privileges. Bucking years of precedent, the Commission found, dubiously applying the “used and useful” doctrine, that the interests and requirements of the parties actually allowing the provision of IPCS (the correctional facilities) should be entirely disregarded and ignored and that incarcerated persons or their friends and families received no benefits from the vast majority of safety and security measures.

Securus does not intend to repeat all the legal and policy arguments addressing the Commission’s determination to preclude use of regulated revenue to cover the costs of safety and security services.²³ Securus instead explains that the concerns raised by then-Commissioner Carr regarding the 2024 Order’s “negative unintended consequences, particularly for public safety,” are being borne out. Notwithstanding the Commission’s unjustified optimism that law enforcement will find a way to pay for safety and security features, IPCS access is in fact being

²² The 2024 Order found that more than one-third of provider reported costs were for safety and security measures. 2024 Order, App. F, Table 3.

²³ *See, e.g.*, Securus Petition to Stay Pending Judicial Review, WC Docket Nos. 23-62 & 12-375, at 7-8 (filed Sept. 26, 2024); National Sheriffs’ Association Petition to Stay Pending Judicial Review, WC Docket Nos. 23-62 & 12-375, at 4-6 (filed Oct. 16, 2024); Reply Comments of Securus Technologies, WC Docket Nos. 23-62 & 12-375, at 20-29 (filed July 12, 2023). *See also* Letter from Senator Ted Budd and Congressman Richard Hudson, to Chairman Brendan Carr, April 2, 2025.

reduced and “essential law enforcement tools” are being lost, particularly at smaller facilities.²⁴ As the Delete Public Notice explains, experience gained from implementation of the rule can provide a basis for concluding that a rule is “unnecessary or inappropriate, whether in its current form or otherwise.”²⁵ That is the case with the 2024 Order’s preclusion of using regulated revenue to ensure that IPCS are used safely.

It has been Securus’ experience to date that many correctional facilities do not have the budgetary resources to sustain a complete suite of their required safety and security measures. This leaves facilities with a limited set of bad alternatives. First, they will be forced to stop providing IPCS altogether, as occurred in the Baxter County 100-person jail in Arkansas.²⁶ Second, facilities may continue to provide IPCS but will be forced to substantially reduce their safety and security measures, putting incarcerated people, their friends and family, law enforcement and the public at large at risk.²⁷ Alternatively, unable to find the budgetary resources to pay for safety and security measures, many correctional agencies, especially at smaller facilities, may sharply curtail availability of calling services due to the loss of automated mechanisms to monitor communications. Finally, some providers may simply cheat and offer facilities contracts that do not comply with the Order.²⁸

²⁴ 2024 Order, Statement of Commissioner Brendan Carr Approving in Part and Concurring in Part, p. 500-01.

²⁵ Delete Public Notice at para. 3.

²⁶ Baxter County Sheriff announced on February 25th that “[d]ue to new regulations being put in place by the Federal Communications Commission that begin on April 1, 2025, the Baxter County Sheriff’s Office has determined that it will no longer be feasible to keep and maintain the inmate phone system in use at the Baxter County Detention Center.” *See* Securus/Pay Tel Letter at 3, n. 5.

²⁷ *See* Securus/Pay Tel Letter at 5 (“Securus has renegotiated contracts with at least 18 customers that lack sufficient financial resources to pay for the suite of safety and security tools they previously relied upon to provide IPCS safely to their populations and, accordingly, have elected to move forward with a substantially reduced set of those tools, thus endangering facility and public safety.”).

²⁸ *See* Securus/Pay Tel Letter at 5-6.

All of this reinforces the view that the Commission badly miscalculated when cutting off funding for almost all safety and security measures. These features not only help detect and deter criminal conduct, fraud or misuse of communications services in real time, but they provide crucial evidence for the broader law enforcement community to prosecute crimes. The Commission recognizes the importance of the last point by allowing use of regulated revenue to pay for compliance with CALEA, the law that enables law enforcement to intercept in real-time and record communications by requiring telecommunications providers to make their equipment and services capable of such efforts when served with a lawful order. To the best knowledge of Securus personnel, in its entire history, Securus has never received a CALEA request. The reason is that law enforcement effectively already had the same capability through the existing recording, monitoring and recording functions of IPCS calling platforms. Instead of receiving CALEA requests, Securus has received numerous requests from law enforcement to obtain access to stored recordings, which may no longer be available at many facilities due to the 2024 Order.

To address these concerns, Securus urges the Commission to reverse its findings precluding use of regulated revenues to fund safety and security measures. It should give weight to the decisions of those entrusted with operating and managing correctional facilities to determine what safety and security measures are necessary to address their risk environment and recognize these safety and security services as integral to the decision by correctional facilities to allow for the provision of IPCS, and allow for the recovery of their costs through call rates.

To be clear, any decision by the Commission to allow providers to fund these services via regulated revenue and offer them at reduced or no cost to facilities, which is standard practice for IPCS services generally, must be coupled with a corresponding, cost-based increase in the rate

caps, for the simple reason that the 2024 Order's rate caps do not include any amounts to cover the costs of the services. The per-minute costs for these safety and security services are identified in the 2024 Order, providing the data needed to quickly increase rate caps accordingly.²⁹

IV. Ancillary Services and Minimum Deposit Rules

The 2024 Order eliminated separate, per transaction ancillary services charges and required IPCS providers to recover their costs of these services in their general rates to consumers. It concluded that the cost of ancillary services, based on reported costs, was \$0.011 per minute, and included this amount in the rate caps.

The amount included in rate caps for ancillary services cost recovery is rapidly proving to be inadequate. The ruling against separately charging for ancillary services for each transaction, combined with the Commission's insistence that there be no minimum deposit thresholds, is quickly increasing providers' costs in ways that the new rate caps cannot accommodate. Costs are increasing because consumers are responding rationally to the economic signal the Commission sent by eliminating separate charges and allowing very small transaction amounts. Data collected by Securus since the elimination of separate charges in November already shows that consumers are shifting their behavior. For one, since consumers are no longer assessed a fee each time they make a payment card purchase for phone service, consumers are shifting from prepaid service to single call services.³⁰ Second, even where consumers continue to fund

²⁹ See 2024 Order, App. F, Table 18, showing industry cost for all categories of safety and security measures at \$0.047 per minute.

³⁰ Single-call services allow consumers without an account to pay for a single call using a credit card. These services are intended to address a particular, narrow use case. Namely, a consumer receiving a first-ever call from an incarcerated loved one. In these circumstances, single-call products allow that consumer to receive that first call and pay for it without needing to first establish an account. These products are designed to facilitate that first connection and were never intended to be used as an alternative to traditional prepaid calling services. Securus is beginning the process of phasing out single call services due to their increasing economic unviability resulting from the Order's incentive structure.

prepaid accounts, consumers are making very small deposits and more frequent deposits. The average friend and family deposit is reaching the point where the amount of the deposit is less than Securus' transaction cost. The possibility of this occurring was presented in the record both before and after the 2024 Order was released.³¹ HomeWAV's reconsideration petition warned of this exact outcome.³² Again, consumers are simply responding rationally with the result that payment processing costs are quickly rising above the \$0.011 per minute allotted in the rate caps.³³ The Commission dramatically changed the rules of the game without in any way accounting for the effects of those changes. The Commission should reassess its decision to preclude separate, transaction-based ancillary service charges.

If the Commission is not prepared to address ancillary services directly, it can provide immediate relief by eliminating the rule against minimum deposits.³⁴ The Commission's rules

³¹ See, e.g., Securus Reply Comments, WC Docket 12-375, at 35 (Mar. 3, 2023), ("The combination of no restriction on small dollar deposits combined with a prohibition on automated payment fees results in consumers making multiple small transactions that impose transaction costs on the provider while limiting the ability of the provider to recover these costs through call rates. Whatever margin is recovered from the calls paid for through these small amounts is insufficient to cover the transaction cost of the funding event.") See, also, Letter from Lee Petro, counsel to NCIC Correctional Services, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62 & 12-375, at 6 (filed March 6, 2025) (proposing a \$5.00 minimum deposit amount with a deposit cap "at least not below \$100.00").

³² HomeWAV Petition for Reconsideration and/or Clarification, WC Docket Nos. 23-62 & 12-375 at 5 (Oct. 21, 2024):

"Additionally, because IPCS providers are prohibited from imposing minimum deposit amounts, the inability to pass through costs assessed by third parties to process consumer transaction requests will encourage behavior that increases provider costs which will not be recoverable under the new rate structure. The prohibition of account minimums, coupled with the new prohibition on all ancillary fees, invites users to inundate providers with small deposits. An influx of small deposits will greatly complicate and increase the costs of establishing and maintaining customer accounts. In the aggregate, account holders are likely to deposit such small sums, on a repeated basis, that the combination of rate caps and the fees assessed by third-party payment processors to providers will result in an unsustainable situation for providers."

³³ When setting the new rate caps in the Order, the Commission only used historical ancillary services cost data without adjustment for predictable changes in consumer behavior resulting from new incentives to increase the number of transactions as a result of removing funding fees.

³⁴ The codified rule at 64.6100(a) bars minimum **balances** not minimum **deposits**. Nevertheless, the Commission has interpreted the rule to preclude any minimum deposit. See *Rates for Interstate Inmate*

bar providers from imposing a minimum deposit amount, but those rules were predicated on concerns that requiring high minimum or low maximum deposit limits could be used to extract more per transaction. Without the discipline of a separate transaction fee, however, there is nothing stopping consumers from depositing \$2 or \$3 at a time using their payment cards, and that is exactly what they are doing. Even a modest minimum deposit like \$10 would alleviate the losses that providers are beginning to incur with the increasing amount of small-dollar funding transactions. Here, there are also examples of providers simply cheating and requiring minimum deposits in contravention of the Commission's rules.

The Delete Public Notice indicated that where experience gained in implementing a rule “provides a reason to believe the that the rule is unnecessary or inappropriate,” the agency should take appropriate corrective action. It also notes that rules like minimum deposits do not exist in isolation but “operate against a backdrop of other FCC rules.”³⁵ The Commission's elimination of separate ancillary charges changes entirely the regulatory context of its minimum and maximum deposit rules set out in section 64.6100 and its explanation of that rule in the 2015 Order. With elimination of separate ancillary service charges, the initial policy basis for the rules no longer exists, rendering the rule no longer appropriate or necessary. Allowing a modest minimum deposit level such as \$10 would alleviate the unanticipated cost burdens imposed by the 2024 Order's ancillary service ruling and will enable providers to at least recover their payment card and other processing costs.

Calling Services, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12852, ¶ 178 (2015) (2015 Order) (“we prohibit ICS providers from instituting prepaid account minimums, and require that any provider that limits deposits to set the maximum purchase amount at no less than \$50 per transaction”).

³⁵ Delete Public Notice at 3, 4.

V. The Commission Should Reverse Its Interpretation That It May Regulate IPCS Providers' Practices

The Commission has taken the position that sections 201 and 276 of the Communications Act as amended by the MWR Act authorizes it to regulate the practices of IPCS providers, not just their rates and charges.³⁶ As Securus explained in its comments in response to the further notice, the Commission's authority is not so expansive.³⁷ The Act grants the Commission authority to establish just and reasonable rates and charges for IPCS providers and, tellingly, excludes the Commission's general authority under section 201 to regulate "practices." Nor does section 276's requirement that the Commission establish a plan to compensate providers implicitly authorize regulation of practices designed to ensure consumers are compensated, apart from the sole requirement that rates and charges be just and reasonable. The Commission should reverse its expansive interpretation of the Communications Act. But even if the Commission has some degree of authority to regulate practices, the Commission's specific application of that authority to establish highly prescriptive, costly and burdensome regulations regarding refund obligations and excessive disclosure requirements should be reversed, as set forth below.

VI. The Commission Should Eliminate Its Automatic Refund Rule

The 2024 Order greatly expanded providers' refund obligations and imposed highly prescriptive, overly burdensome, and impracticable rules. The most problematic rule change was to require providers to automatically refund unused balances after a period of "inactivity." The new rules are particularly problematic for "debit" accounts, which fall under the refund rules to the extent the provider controls the disposition of debit account funds.³⁸ Providers have limited

³⁶ 2024 Order, ¶¶ 79-88.

³⁷ Securus October 2024 Comments at 19-24.

³⁸ 2024 Order at ¶ 535.

control over these accounts, which never become “inactive,” and even more limited opportunities to provide the requisite notifications and disclosures to incarcerated persons. The rules are not only impracticable but unnecessary because unused amounts in debit accounts are always refunded upon a person’s release or transfer. Refunds before those events simply provide for the circular routing of funds, out of the debit account and right back into it. The requirement to refund debit accounts based on inactivity should be eliminated.

At the heart of these rules is a decision with the best of intentions: that IPCS accounts should all be treated the same. The assumption behind these rules is that all IPCS accounts are identical in function and administration. This assumption is wrong and the result are rules that are impractical in design and unworkable in application.

In general, there are two types of IPCS accounts: prepaid accounts established by family and friends to fund calls from loved ones in correctional facilities, and debit accounts established for incarcerated people. As these accounts are established for different sets of consumers in different environments, the characteristics of these accounts and their administration are correspondingly different and do not lend themselves to one-size-fits all regulation.

Prepaid accounts, established at the discretion of family and friends, exist for as long as the family and friends decide, and have no restrictions on the ability of the IPCS provider to engage directly with the account holders for purposes of communications or transactions. It makes sense that an account holder who does not use an account for an extended period of time may no longer have need for it, and the IPCS provider can close the account. There is no restriction on the ability of the account holder to use their money to fund an account and to receive those funds back. Any account-related communications can be made available directly by the IPCS provider to the account holder via email, Internet, or physical mail. Prepaid

accounts can be designed to provide flexibility to the account holder for funding calls (e.g., Securus AdvanceConnect accounts can pay for calls from any correctional facility served by Securus).

Debit accounts are completely different. Debit accounts are automatically set up when a person arrives at a correctional facility and these accounts were intended to be available until that person is released or transferred. Correctional facilities restrict the ability of incarcerated people to take cash out of their debit account, and control the ability of third parties (such as IPCS providers) to transmit information to the incarcerated person. Debit accounts were not intended to be closed before the person is released or transferred. In many cases, the IPCS provider has no ability to provide disclosures or statements unless the correctional facility agrees to facilitate the transmission of that information. Further, funds in some types of debit accounts may be administered by the IPCS provider, but funds in other types of debit accounts may be controlled by the correctional facility. Debit accounts were designed to pay for calls by an incarcerated person at a specific facility;³⁹ if the person is released, the account is closed, and if the person is transferred, the account is closed at the current facility and a new account is created at the next facility. If the debit account is closed when the person is released, then the unused balance will be refunded to that person. If the debit account holder is transferred to another facility, then the unused balance will also be transferred to that facility.

The rules regarding IPCS account administration do not take into account any of these differences, and reflect an adamant refusal to acknowledge these disparities.

³⁹ Debit accounts may also be used to pay for other, non-regulated services such as entertainment content on tablets.

A. The Commission's Refund Rules

The Commission initially addressed refunds in its 2022 IPCS Order. Responding to concerns that IPCS providers were taking into revenue unused balances in prepaid accounts sometimes within 90 days of inactivity, the Commission ruled that unused balances remain the property of account holders and must be refunded, if possible, after 180 days of continuous inactivity. If refunds were not possible, then providers are to follow state escheat laws.⁴⁰ The 2022 IPCS Order did not require automatic refunds.

Following enactment of these interim rules governing unused balances, Securus, at considerable time and expense, established procedures to contact friends and family prepaid account holders, based on the contact information provided to Securus, before and after the 180-day period of continuous inactivity had lapsed.⁴¹ Securus in fact made it a practice to warn these account holders that the inactivity period was about to expire.

The Commission adopted permanent account refund rules in the 2024 Order that in critical respects expand beyond the interim rules. Not content with mandating that refunds be provided within a time certain, where practicable, the Commission adopted a number of burdensome, highly prescriptive processes and disclosures that are unlikely to materially further the ultimate goal of refunding unused balances wherever possible. The rules are not only burdensome and costly to implement, for debit accounts held by the incarcerated person they are impracticable and wholly unnecessary. Providers must incur all of the costs of establishing these refund mechanisms and may not seek to offset such costs by imposing any fees associated with the refund. Moreover, the cost of compliance is not accommodated in new rates. Like many of

⁴⁰See, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, 37 FCC Rcd 11900, 11931-36 (2022) (*2022 IPCS Order*).

⁴¹ Securus explained its refund process in its reply comments to the Commission's *Sixth FNPRM*. Securus Reply Comments in *Rates for Interstate Inmate Calling Services*, filed March 3, 2023 at 36-37.

the Commission's obligations, the refund mechanism is essentially an unfunded mandate whose costs were never contrasted with purported benefits.

The new rules require *automatic* refunds for all accounts, prepaid **and debit**, after 180 days of inactivity.⁴² The rules further provide that if the IPCS provider becomes aware that the incarcerated person is being transferred to another facility or is being released, "the 180 days of inactivity will presumptively be deemed to run."⁴³ The provider is also required to "contact the account holder prior to closing the account and refunding the remaining balance, to determine whether the account holder wishes to continue using the account, or to close it and obtain a refund."⁴⁴

For debit accounts, the account holder is the incarcerated person.⁴⁵ The funds deposited in debit accounts are often transferred from commissary accounts over which IPCS providers

⁴² 2024 Order, ¶ 536; 64.6130(d). The new automatic refunds rules apply to any account that can be used for pay for debit or prepaid accounts, even if the account is also used for non-telephone services over which the Commission does not have jurisdiction. *Id.* at ¶ 537. By automatic, the Commission means the IPCS provider must take proactive steps to refund unused amounts, *id.* at ¶ 544. The incarcerated person need not request a refund before one is issued.

⁴³ 2024 Order at ¶ 539.

⁴⁴ *Id.* at ¶¶ 539, 545; 64.6130(f). The specific requirement to ask the debit account holder whether they want to continue using the account is particularly unworkable, impractical, and unnecessary. In the first instance, the IPCS provider may not be able to even make the inquiry unless the communication is permitted and facilitated by the correctional facility. Further, as noted, a debit account is designed to service a person at a specific facility. If the person is released or transferred, the debit account is not designed to move with them. (It's not clear why the Commission thinks a released person would want to continue to maintain a debit account.) Even if a debit account could move with a person being transferred, the person may be transferred to a facility operated by a different agency with a contract with a different IPCS provider, who is not going to use a competitor's account for paying for calls. To allow the transfer of a debit account would require a redesign of the systems used to administer and maintain the accounts, another unfunded mandate for an objective that serves no practical purpose.

⁴⁵ Securus provides two types of debit accounts: SCP [Secure Communication Platform] Debit accounts and Securus Debit accounts. For SCP Debit accounts, the relevant prison or jail administers the debit account and controls the funds. An incarcerated person funds an SCP Debit Account through his or her commissary account. Securus does not administer refunds for SCP Debit accounts, because those accounts are controlled by the carceral institution. For Securus Debit accounts, Securus maintains the incarcerated person's account, and it can be funded either by the incarcerated person through their commissary account or by deposits from friends and family. Deposits made by friends and family become the property of the incarcerated person and are therefore refundable only to the incarcerated person.

have no control. The refunds must be issued within 30 days of an account being deemed inactive using prescribed methods.⁴⁶ Finally, the Commission requires providers to “provide account holders, through their billing statements and statements of account, notice of the status of IPCS accounts prior to being deemed inactive.” The notice must be provided at least 60 days before the account is deemed inactive and be included in each billing statement or statement of account “until either some action by the account holder results in the inactivity period being restarted or the account is deemed inactive.”⁴⁷ The notice must describe how the account holder can keep the account active, and how to update account refund information.⁴⁸ As described below none of this works where the account holder is the incarcerated person.

B. Inactivity-based Refunds on Debit Accounts Are Impracticable and Unreasonable.

The Commission extended all of its prescriptive rules to debit accounts. They simply do not work and in the main are irrational and unnecessary. The rule requires that providers establish a mechanism to track usage of debit accounts and to automatically refund “unused” amounts to debit account holders after a period of inactivity. But debit accounts never become inactive. They are established when a person arrives at the correctional facility and the account remains open and available until the person is released or transferred from that facility. Imposing an artificial 180-days of inactivity rule to trigger refunds would simply take the money of out of

⁴⁶ *Id.* at ¶ 548; 64.6130(h). Refunds must be provided in the same manner as was used to place funds into the account. The Commission found that “providers must issue refunds in the original form of payment, an electronic transfer to a bank account, a check, or debit card.” *Id.* at ¶ 553.

⁴⁷ 2024 Order at ¶ 554. The requirement to provide certain account disclosures only by monthly statement creates a number of burdens for prepaid and debit accounts alike. Securus’ billing system only generates a monthly statement when there is account activity. In order to provide a statement after 120 days of inactivity, Securus will need to develop a separate process to generate the statement for notification purposes only. The information contained in this statement could be provided to prepaid account holders by other, more efficient means using existing systems (e.g., by email using current account information).

⁴⁸ 2024 Order at ¶ 554; 64.6130(k).

the debit account and put it right back in,⁴⁹ effectively mandating a circular transaction without meaning. This is irrational.⁵⁰

Moreover, the refund obligation entails a number of disclosures to the incarcerated person that IPCS providers are unable to make. Securus, like other IPCS providers, has extremely limited ability to initiate communications with incarcerated persons. Communications to incarcerated persons are tightly controlled by correctional authorities. (In contrast to efforts to contact the incarcerated person, IPCS communications are always initiated by the incarcerated person and always from the correctional facility to the called person). The rules contemplate three methods for making billing statements or statements of account available to account holders: (1) via the IPCS provider's website; (2) via the IPCS provider's online or mobile application; or (3) on paper upon specific request.⁵¹ None of these are necessarily available to incarcerated persons.

As a practical matter, providing these disclosures to incarcerated persons, if possible at all, will require the intervention of correctional authorities, and thus will impose additional burdens on state and local agencies over which the Commission has no jurisdiction. Correctional authorities would have to be alerted about, and receive, the notification in the first instance,

⁴⁹ As Securus previously informed the Commission: "[A]s a practical matter, an incarcerated person cannot cash a refund check, likely has no credit card, and usually has no electronic banking account. The one place an inmate typically holds funds is the inmate's commissary account, which the carceral institution exclusively controls. Those accounts are not structured to receive funds directly from debit accounts, and moreover, carceral institutions have rules governing the possession and use of money in commissary accounts and within the facility, to which the Commission should defer. So it would not make sense for the Commission to mandate transfers into those accounts." Securus 6th FNPRM Reply Comments at 41.

⁵⁰ This circular movement of funds likely will also create unnecessary complexity in the accounting and auditing processes.

⁵¹ 64.6110(d).

printing them out on paper⁵² where tablet service is not available, and then deliver them to the incarcerated person. Although Securus has some additional ability to communicate with incarcerated persons that have individual tablets, many facilities do not have tablets. The Commission made no assessment of the scope of these additional burdens or the costs that they may impose on the correctional authorities.

All of this is unnecessary because Securus, like other providers, refunds any unused amounts in debit accounts when an incarcerated person is released or transferred to another facility. Requiring refunds before those events is, as described above, non-sensical.

Given the extreme difficulties of complying with the new requirements for debit accounts, some correctional facilities have indicated they are unwilling to administer these additional requirements and may not allow further use of debit accounts. The potential elimination of debit accounts is yet another unintended consequence of the Commission's exceedingly regulatory approach.

The Commission should eliminate the requirement to issue automatic refunds for debit accounts, and related disclosure and notification obligations. Securus thus urges the reversal of the refund rules that: (1) require automatic refunds for debit accounts after 180 days of continuous inactivity (64.6130(d)); (2) require notification to incarcerated debit account holders 60 days before the 180-day period expires (64.6130(k); and (3) notification of incarcerated persons before issuing a refund to assess whether the incarcerated debit account holder wishes to close the account and receive a refund or keep the account open. (64.6130(f)).

⁵² Because of skyrocketing use of drugs that are penetrated onto paper, facilities have all but done away with paper distribution of notices. Family and friends often must send physical mail through a digitization service that delivers the content digitally for viewing. Even though the correctional facility staff could receive and print statements and notifications, there is still a concern of internal tampering of paper to deliver drugs.

As noted above, at the heart of these rules is the meritorious objective of providing consumer protections to debit account holders. Any future consumer protection efforts directed at debit accounts need to take into consideration that these accounts exist in a carceral environment and they cannot be administered in the same way as prepaid accounts. This consideration needs to include how debit accounts were designed, restrictions on how they operate, and the needs and requirements of the correctional facilities in which they are established.

C. The Commission Should Eliminate Automatic Refund Requirements Generally

Under the Commission's interim refund rules established in the 2022 Order, the Commission required providers to make reasonable efforts to effectuate a refund by contacting consumers. The Commission cited no evidence that providers were not undertaking the reasonable efforts that the 2022 Order mandated. An automatic refund requirement is not necessary to effectuate the Commission's primary goal of precluding providers from taking unused balances into revenue. That practice is precluded by the general rule that unused balances remain the property of the account holder and, if not refundable, must be treated pursuant to state escheat laws.

Nor is an automatic refund obligation necessary to ensure consumers do not lose money that they have prepaid. The general obligation to take reasonable efforts to effectuate a refund as refined in the 2024 Order are sufficient to ensure that any consumer that wants a refund will be able to get one. Providers are required to give notifications that unused balances are available and the consumers have every right to request a refund. An automatic refund obligation is unnecessary and imposes substantial costs that are unrecoverable. The Commission bars

providers from seeking any fee to recover refund costs and the rate caps do not reflect automatic refund costs because the requirement was not in place when providers reported their cost data.

VII. The Commission Should Eliminate Unnecessary and Counterproductive Disclosure Requirements Associated with Alternative Pricing Plans

Securus appreciates the Commission's determination to allow providers to offer alternative pricing plans. Securus was a strong proponent of this action given its own efforts to offer such programs that were highly popular and effective at reducing costs while increasing connections.⁵³

The 2024 Order gives providers the option of offering alternative pricing plans that consumers may choose to utilize. Consumers must always have the option to stay with per-minute pricing and providers cannot require consumers to sign up for long-term plans. Service periods cannot be longer than one month. Consumers may opt into automatic renewal plans. The Commission's key concern is that providers do not use the plans as a way to avoid the rate caps on per-minute pricing. To achieve this result, the Commission requires that plans have a "breakeven point equal to or less than the applicable rate cap."⁵⁴ Securus has no objection to this general framework, including a reasonable set of disclosures that provide sufficient information to enable consumers to make a rational choice between an alternative pricing plan or per-minute pricing.

The Commission, however, goes overboard, codifying six separate but also somewhat overlapping sets of disclosures (64.6140(c)(2), (c)(5), (c)(6), (d), (e), & (f) plus disclosures

⁵³ Letter from Michael H. Pryor, Brownstein Hyatt Farber Schreck, LLP, Counsel to Securus Technologies, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62 and 12-375, Attach. at 30 (filed Dec. 21, 2023) (Securus Dec. 21, 2023 *Ex Parte*) (explaining that the alternate pricing plans that Securus piloted provided "budget predictability for consumers" and "calling times increased 58%").

⁵⁴ 2024 Order at 448; 64.6140(b)(1). The breakeven point means "the usage amount: (1) Below which a Consumer would pay more under the Alternative Pricing Plan than the Consumer would have paid under the Providers' per-minute rates, and (2) At or above which the cost of the Alternative Pricing Plan would be less than or equal to what the Consumer would pay under the Provider's per-minute rates." 64.6000.

required at 64.6110).⁵⁵ These multiple sets of disclosures will sow considerable confusion of duplicative timing requirements and overlapping substantive requirements. As detailed further below, the rules begin with a list of disclosures that must be made (1) before a consumer enrolls, (2) upon request at any time, (3) with each billing statement or during any communication with the consumer, and (4) at the beginning of each call. 64.6140(c)(2)(i)-(v). The rules then list another set of similar but not identical disclosures to be made before a consumer enrolls or at any time. 64.6140(c)(5)(i), (ii)(A)(B)). Yet another set of disclosures must be in billing statements. 64.6140(c)(6)(i)-(v). The rules then go on to include more detailed disclosures regarding dropped calls, 64.6140(d)(1), (2)(i)-(iii), regarding automatic renewals, 64.6140(e)(1)-(4), and cancellation and refunds, 64.6140(f)(1)-(4). It is virtually impossible to parse through this bewildering array of disclosures and determine what must be disclosed when and how. The entire framework must be revised and rationalized. Each set of disclosures are further described below. Although certain recommendations are made with regard to specific sets of disclosures, the best course of action is to simply start over.

A. Eliminate the Requirement to Make Lengthy, Repetitive Disclosure at the Beginning of Each Call, 64.6140(c)(2)

The Commission requires that the following disclosures be made at multiple times, including at *the beginning of each call or communication*:

- The plan's rates including taxes and fees, a detailed explanation of those taxes and fees, total charge, quantity of minutes, calls or communications included in the plan, the service period, and the beginning and end dates of the service period (c)(2)(i);
- Terms and conditions, (c)(2)(ii), including explaining the provider's policies concerning dropped calls and communications, automatic renewals, and cancellations as set forth in subsections (d), (e) & (f);

⁵⁵ See 64.6140(c) (stating that the provider must comply the disclosures in 64.6110 "as well as the requirements in this section").

- An explanation that the per-minute rates are always available as an option and that the per-minute rates apply to calls that exceed the plan's limits;
- The breakeven point (the point at which the consumer saves money using an alternative plan rather than per minute rates); and
- The ability to obtain prior usage and billing data upon request, for each of the most recent three month service periods (where feasible), including total usage and total charges including taxes and fees.⁵⁶

The Commission requires that the above-described disclosures must be made multiple times: (1) Before a consumer enrolls in the plan; (2) upon request at any time after enrollment; (3) with a billing statement or statement of account, and any “related communications;” and, (4) as noted, at the beginning of *each* call.⁵⁷ Requiring that all of this information be disclosed at the beginning of each call or communication (e.g., a video call) is particularly egregious. The amount of time required to make all of these disclosures could well take up a significant portion of the call. Correctional authorities typically restrict the length of a call to between 15 to 30 minutes. These disclosures would be in addition to long-required mandated disclosures at the beginning of and/or during the call that the call is from a carceral institution and is being recorded. Consumers have already complained that even these few disclosures are annoying and frustrating. It is likely consumers would find that the additional disclosures above, repeated each time a call is made, to be extremely intrusive and unnecessary. Some incarcerated persons make multiple calls a day to the same friend or family member who would be forced to listen to the same lengthy disclosure over and over again. Securus found this to particularly be the case for its alternative programs. Requiring consumers to listen to a litany of the same disclosures before

⁵⁶ 64.6140(c)(2)(i)-(v).

⁵⁷ The 2024 Order requires all providers to make available monthly billing statements and statements of account that inform the consumer of the amount of any deposits into their account, the duration of all calls charged to the consumer, and the balance in the account after those charges. The bill or statement must be available on the provider's website, online or mobile application or as a paper bill if requested. 64.6110(e).

every call will drive them from these plans. These requirements seem intended to operate more as a poison pill to modernizing the delivery of IPCS than as useful disclosures to consumers.

Moreover, these disclosures suffer from ambiguities regarding what is required. For example, how much explanation of taxes and fees applicable to the communications is sufficient to qualify as “detailed?” What must the provider include when describing the “types of dropped calls” for which a credit or refund may be received? As the Commission correctly notes, there are numerous reasons a call may drop that have nothing to do with problems on the provider-controlled equipment or network.⁵⁸ It is of little benefit, and potentially unlikely to satisfy either the consumer or the Commission, to disclose that credits or refunds may be available only for calls determined, after investigation, to have been dropped due to the provider’s network failure.

At the very least, the Commission should eliminate the requirement that these voluminous disclosures be repeated for each call. However, given the ambiguous and repetitive nature of these disclosures, the entire disclosure framework should be revisited and revised.

B. Additional Disclosures Far Exceed What Is Necessary to Achieve the Goal of Protecting Consumers Opting Into Alternative Rate Plans

Having set forth a detailed list of disclosures that must be made at various times including before enrollment and upon request at (c)(2), the rules then identify a further set of disclosures that must be made before enrollment, and at any time upon request at (c)(5). As shown below, this list is duplicative in some degree:

- The rates, breakeven point, and total cost including taxes and fees (c)(5)(i);
- An explanation that the consumer’s prior usage and billing data is available upon request through a readily accessible means and must include for the provider’s most recent three service periods (where feasible) (c)(5)(ii):

⁵⁸ See 2024 Order, ¶ 454.

- the minutes of use for each of the calls or communications made by the consumer and the applicable per minute rate charged;
- the total number of minutes;
- the total charged for each service period including the details of any taxes or fees; and
- prior usage and billing must be made available via the provider's website or online or mobile application or by paper upon request.⁵⁹

Once the consumer enrolls in the plan, the provider must provide monthly billing statements or statements of account using the same method the consumer used to sign up for the plan, and via paper upon request at subsection (c)(6). The billing statement or statement of account must be specific to the plan being used and include the following:

- Call details, including the duration of each call made, and total minutes used for that service period, and the total charge for that period, including taxes and fees with explanations for each tax or fee (c)(6)(i);
- The charges that would have been assessed for each call using the provider's per minute rate, and the total of those charges (c)(6)(ii);
- The calculated per-minute rate for the service period under the alternative plan calculated as the charge for the service period divided by the total number of minutes used by that consumer, with an explanation of that rate (c)(6)(iii);
- The breakeven point with an explanation of the breakeven point (c)(6)(iv); and
- Information about deposits made to the consumer's IPCS account and account balance (c)(6)(v).⁶⁰

If the provider offers the option of automatic renewals as part of the plan, the provider must make the following additional disclosures when it initially offers the option or with each monthly automatic renewal (64.6140(e)):

- Explain the terms and conditions of automatic renewal in plain language when the provider initially offers the plan and before any automatic renewal is about to occur (e.g., monthly) by whatever method the provider has established for consumer notifications (e)(2);

⁵⁹ 64.6140(c)(5).

⁶⁰ 64.6140(c)(6).

- An explanation that a consumer may cancel their participation in the plan (e)(3); and
- Again explain the terms and conditions of automatic renewal “directly to the consumer” no later than three business days before the renewal date as a minimum, the method of communication the consumer agreed to at the time they enrolled.⁶¹

The requirement that the provider explain the plan each time the consumer renews is unnecessary unless the terms of the plan have changed. Note also the inconsistency between the method of notification. The rule initially requires notification before a renewal is about to occur “by whatever method the provider has established.”⁶² The rule then requires notification three business days before renewal using “the method of communication the consumer agreed to at the time they enrolled.”⁶³ While those may not entail different methods of notification they may depending on the method the consumer agreed to use.

Finally, the provider must provide information regarding the cancellation of a plan including (64.6140(f)):

- An explanation that the consumer may cancel at any time and where applicable that the provider will begin billing the consumer at the applicable per-minute rates by the first day after the termination date (f)(1);
- An explanation of how the consumer may cancel (f)(4)(ii);
- An explanation that the consumer can chose the termination date (f)(4)(iii); and
- An explanation that the consumer is entitled to a prorated refund of the remaining balance where the incarcerated person has been released, transferred to another facility or precluded by the facility from making calls “for a substantial portion” of the subscription period.”⁶⁴

⁶¹ 64.6140(e).

⁶² Contrast the flexibility provided here with the highly prescriptive requirement in the refund rules that account status notifications must be provided in billing statements or statements of account.

⁶³ Compare 64.6140(e)(2) with 64.6140(e)(4).

⁶⁴ 64.6140(f). The Commission provides little guidance of what might constitute a “substantial portion” of the subscription period. It suggests 50% or more, but only as an example. 2024 Order at ¶ 462. The ambiguity invites disputes. A provider might determine, for example, that 90% is substantial while an incarcerated person might claim that 40% is sufficient for a refund.

Finally, providers offering an alternative pricing plan must also make the disclosures described in section 64.6110, some of which are redundant and others conflicting. These include disclosing:

- How to manage an IPCS account (64.6110(a)(1)(i);
- How to fund an account (a)(1)(ii);
- How to close an account and obtain a refund of any unused balance (a)(1)(iii);
- How to obtain a refund cross referencing yet another section of these rules (section 64.6130 (a)(1)(iv).

Simply describing the breadth of these disclosure obligations indicates the burdens they impose on providers. (As with other aspects of the order, the Commission did not provide an estimate of the costs of these alternative pricing plan disclosure obligations.) While some of these disclosures impart important information, collectively they go well beyond what is reasonably required to protect consumers. The requirement that certain basic information, such as a description of the plan or the breakeven point, must be disclosed repeatedly and in different formats (*e.g.*, monthly billing statements, at the beginning of each call, and maintained on the website) is unnecessary to keep consumers informed. The plans likely will entail a set number of calls or minutes for a set monthly price and the breakeven point is unlikely to change. Unless the terms of the plan change, there is no reason to repeat this basic information.

Nor is it reasonable to require providers to provide both the charge for the plan, plus what the consumer would have paid using the applicable per-minute rate at the facility.⁶⁵ This will require providers to develop a bill for a service not being utilized. The burden is exacerbated

⁶⁵ 64.6140(c)(6)(ii) (requiring disclosure of the “charges that would have been assessed for each call using the Provider’s per-minute rate, and the total of those charges.”).

because per-minute rates vary by facility so that providers would have to calculate the per-minute rates at each facility at which an alternative pricing plan is being offered based on a measure of the consumers use. As noted, alternative pricing plans likely will be based on a preset number of calls, for example, 100 calls per month for X dollars. To comply with the requirement to inform the consumer what the same usage of the service would have cost if the consumer instead used the applicable per-minute rate will require providers to capture how long each call lasted, determine the per-minute rate in effect at the facility, and essentially generate a fake bill that would tell the consumer how much he or she would have paid.

The Delete Public Notice states that the experience with a rule can provide a basis for its elimination or modification. Although the Commission's alternative pricing plan have not been implemented, at least by Securus, Securus did operate alternative plans for more than year and gained considerable practical experience in implementing such programs. The Securus programs were highly successful, as exemplified by numerous consumers seeking to ensure their continuance after the Commission's rule changes made them impracticable. Securus' programs provided the information needed for consumers to make intelligent, rational decisions about whether to enroll in the alternative plan. They did not provide nearly the level of detailed, redundant disclosures the Commission appears to believe necessary to ensure consumers are not being "ripped off." Securus received no complaints from participants that they did not have sufficient information to make intelligent choices. Despite the Commission's nanny-state determination, goaded by advocates, that friends and families' hands must be held at every turn, consumers are perfectly capable of making rational economic choices with far fewer repetitive disclosures than those prescribed by the Commission.

Given the overlap, vagueness, and redundancy of these disclosures, Securus urges the Commission to revisit the entirety of the disclosure obligations related to alternative plans and develop a rational, limited set of key disclosures and eliminate redundancy.

VIII. International Rate Rule Revisions

A. International Rate Disclosure Rule Clarification

The 2024 Order requires providers to clearly label all additional charges for international calls including the amount the IPCS provider paid to the underlying carrier to transmit the call to the foreign destination, which may be passed through to the consumer without markup.⁶⁶ Specifically, section 64.6110(c) requires providers to label on bills and statements all charges for international calls “including the costs paid by the provider to its underlying international provider to terminate the International Communication to the International Destination of the call.” The Commission should eliminate the quoted language. It should be sufficient from the consumer’s perspective that the total cost to the consumer of the call is disclosed. Informing the consumer of the amount that the provider paid the underlying terminating carrier provides no relevant information to the consumer. This is because, under the Commission’s rule, the providers may charge consumers the average terminating costs, not the actual cost the provider incurs, which changes call by call as the provider selects the least-cost terminating carrier for any particular call. Providing that actual cost is not only useless information to the consumer, but creates additional burdens for the provider to track that information and correlate it with each international call made by the consumer. The Commission should eliminate the requirement to disclose the actual termination costs for each international call. Alternatively, the Commission should clarify that the consumer disclosure obligation is satisfied by disclosing the average cost

⁶⁶ 64.6110(c).

that the consumer incurred, not the cost the provider actually paid the third party terminating carrier.

B. Modification to Rules for International Rates

The Delete Public Notice recognizes that experience with the implementation of a rule may demonstrate that it is inappropriate.⁶⁷ Such is the case with the Commission’s methodology for setting international rate caps, which was initially established in the 2021 Order.⁶⁸ Under section 64.6030(e), international rates consist of two components: (a) a domestic component cap not to exceed the applicable interstate rate cap for that facility, plus (b) an international component equal to the average amount the IPCS provider paid its international service provider for calls to the applicable international destination during the preceding quarter. Securus recommended this approach as superior to trying to identify actual per-call costs that fluctuate not only country by country, but also call by call to the same country based on the use of least cost routing tables that identify the most cost efficient terminating provider at the moment of the call.

Securus continues to support rate caps for international calls but the implementation of the rule has raised serious concerns. For one, changing the rate cap each quarter is disfavored by correctional agencies, creates confusion for consumers, and makes planning and budgeting difficult. Moreover some states have set their own international rate caps that conflict with the federal caps.⁶⁹ Because Securus’s rating system is not designed to apply an “either/or” logic functionality for call rates and can only apply a single rate for a country, in the cases where there

⁶⁷ Delete Public Notice at p. 3.

⁶⁸ 2021 ICS Order, 36 FCC Rcd at 9596-9600.

⁶⁹ 2021 ICS Order, 36 FCC Rcd at 9597, ¶ 178 (citing New Jersey, which bars state correctional authorities from contracting for international rates above \$0.25 per minute and Illinois, which caps international rates at \$0.23 per minute). See also 730 Ill. Comp. Stat. 5/3-4-1 (2022) (capping international calls from the Illinois Department of Corrections facilities at \$0.23 per minute).

is a statutory or contractual international call rate cap different from the Commission's, Securus must turn off the international rate component and only collect the domestic component to avoid violating the applicable rate cap and thus is unable to pass through any termination charge it incurs.

Securus recommends revising the international rate caps to follow what some states have done, which is to set a single, standard cap for all international calls to all destinations. To reduce constant changes, the Commission should set the international termination component of the overall cap based on the previous year's average cost for all terminations plus the relevant domestic rate cap, reviewed annually. This would promote substantially more predictability in the rates for consumers, while allowing international rates that both comply with statutory or local rate caps and permit the IPCS provider to recover its international costs. The Commission may consider allowing the uniform international rate component to be calculated on a contract level (as international calling patterns may vary from agency to agency) or for the IPCS providers' contracts in the aggregate. Securus recognizes that the result of this approach would be that some international callers would enjoy below cost rates while others may pay more than under the current averaging mechanism.⁷⁰ But that is the nature of averaging generally, which the Commission has embraced.

IX. The Commission's Modifications to the Waiver Process Deprive Providers of Their Ability to Recover Costs, 64.6120

The Commission has established a process by which providers that cannot recover their costs at the rate caps can apply for a waiver. The 2024 Order modifies the waiver requirement in a way that precludes providers from seeking to recover their costs of providing IPCS at the rate

⁷⁰ 2024 Order at para. 473 (rejecting a similar suggestion from Securus).

caps as long as they can earn a profit by providing services at other facilities or by offering other services.⁷¹ The 2024 Order also requires that providers must now show that “the request will not result in unjust and unreasonable IPCS rates and charges,” but it provides no guidance on what that showing requires or how it can be met. The modifications that the Commission made to the waiver process are not fully reflected in the re-codification of the waiver rule but are set forth in the text of the Order.

In a significant departure from precedent, providers can no longer receive a waiver of the rate caps even if it demonstrates that its costs to provide a specific service at a specific facility are not recoverable. The Commission’s 2021 IPCS Order adopted a facility-by-facility waiver process that enabled a provider to obtain a waiver due to the cost structure at a particular facility without regard to the cost structure of the overall contract in which that particular facility is included.⁷² (Contracts can either cover multiple facilities, as is the case with contracts to serve state prisons, or a single facility, such as a single jail).

The new waiver rule effectively jettisons the facility-by-facility rule by precluding waivers for a particular facility where the provider cannot recover its costs if the provider is profitable at the contract level.⁷³ The Commission here is expressly endorsing cross-subsidization and effectively requires providers to operate services at facilities at a loss.

⁷¹ 2024 Order at ¶¶ 475-480.

⁷² 2021 IPCS Order at ¶ 170 (“we establish a modified waiver process requiring providers of inmate calling services that seek waivers of our interstate or international rate or ancillary fee caps to do so on a facility-by-facility or contract basis” rather than at the holding company level); *id.* at ¶ 171 (adopting “a waiver process that focuses on the costs the provider incurs in providing interstate and international inmate calling services, and any associated ancillary services, at an individual facility *or* under a specific contract.”) (emphasis added).

⁷³ 2024 Order at ¶ 480 (“For any waiver request based on a particular facility or group of facilities, the provider must show that the costs of the entirety of its contract are not recoverable under the applicable rate caps, not merely the costs at an individual facility or group of facilities that are part of an otherwise profitable contract.”).

Moreover, to demonstrate contract-wide nonrecovery at the applicable rate caps, providers must submit total company IPCS costs “and other financial data and information, including justification for deviating from ‘average costs of service of a communications service provider.’”⁷⁴ The clear implication is that if the company is profitable at either the full company level, or the contract level, including revenue from unregulated service, the company’s inability to recover costs of providing IPCS at the Commission’s rate caps at a particular facility or group of facilities is insufficient to warrant a waiver. And, as noted, the provider must make a vague and undefined showing that the rate it requires to recover cost at the facility is “just and reasonable.”

The practical inability to obtain a waiver undercuts the Commission’s reliance on the waiver process to justify rate caps that by its own admission preclude cost recovery in many facilities.⁷⁵ The Commission should not be able to rely on a waiver process to justify unreasonably low rates when the requirements to obtain a waiver are practically impossible to meet. The Commission’s modification of the waiver process to prevent facility-by-facility waivers should be overturned and the process restored to comply with the 2021 IPCS Order.

The Commission should restore providers’ ability to obtain a waiver on a per facility basis based on a showing that its costs to provide the service at that facility exceed the applicable rate cap. Additionally, the Commission should eliminate the new obligation to show that the rate required to cover costs, a rate higher than the cap, is also just and reasonable.

The Commission should also adopt an internal deadline to resolve waiver requests. The waiver request will be determinative of whether a provider can economically serve a facility or

⁷⁴ 2024 IPCS Order at ¶ 480.

⁷⁵ See e.g., *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Order Denying Stay, DA 24-1031, at ¶¶ 8, 36 (noting existence of waiver process).

contract. Providers cannot afford lengthy waiting periods as the Commission considers the waiver request. It may often be the case that the availability of the waiver can determine whether a provider should respond to an RFP or accept a contract offer. It will not always be the case that a provider has an existing contract put into jeopardy by the new rate caps, but even in this case the provider needs to know whether it should continue to serve or seek to abrogate the contract if legally possible. Securus recommends that the Commission modify the waiver rule to require the Bureau to resolve a waiver request within 60 days.

CONCLUSION

The Commission's Delete docket offers an opportunity to rectify excessive regulations that do little, if anything, to further the interests of incarcerated persons. Securus respectfully requests the Commission eliminate or modify certain of the its IPCS rules as set forth above.

Respectfully Submitted,

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